645.

SUPREME COURT OF THE UNITED STATES.

No. 109.

LUCIUS W. STOCKTON AND DANIEL MOORE, PLAINTIFFS IN ERROR,

vs.

HARRIET BISHOP.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WEST PENNSYLVANIA.

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J. & G. S. GIDEON, printers.

Among the rolls, records, and judicial proceedings, of the circuit court of the United States, in and for the western district of Pennsylvania, in the third circuit, may be found the following words and figures, to wit:

Copy of docket entries.

McCandless, and McClure & Biddle.	Harriet Bishop, a citizen of the State of Ohio, vs.	18.
Darragh, Loomis, Mahon & Washington.	Lucius W. Stockton & Daniel Moore, citizens of Penn'a.	

Summons case, exit September 17th, 1842.

1842, November 4th, returned. Served by leaving a copy at the dwelling house of D. Moore, November 1st, 1842, and personally on L. W. Stockton, November 2d, 1842.

1843, January 12th. Narr. filed.

1843, February 6th. On motion of Mr. Darragh, rule for security for costs.

1843, February 7th. Rule for security for costs returned, "Served on Mr. McClure, February 7th, 1843."

1843, April 5th. Consent of attorney for defendants, that a commission issue forthwith to take testimony on part of plaintiff, and declension to file cross interrogatories.—(See paper filed.)

1843, April 5th. Interrogatories on part of plaintiff filed, and commission issued to Albert G. Westgate, esq., of McConnellsville, Morgan county, Ohio, commissioner named by plaintiff.

1843, April 10th. Stipulation of John Sarber, as security for costs, filed.

1843, April 18th. Commission, with depositions taken before Albert G. Westgate, esq., returned and filed.

1843, May 10th. Plea of defendants filed.

1843, May 10th. Agreement of attorneys filed.

1843, May 17th. Continued.

1843, October 5th. Subpœna on part of defendants to Dr. Kennedy.

1843, October 28th. Subpœna on part of defendants to Dr. Campbell.

1843, October 30th and 31st. Subpœnas on part of plaintiff to Dr. A. H. Campbell, James Corbin, James Smith, James Snyder, and Daniel Brown.

1843, November 20th. Above subpœnas returned.

1843, November 22d, 23d, 24th, and 25th. Tried by jury, and, 25th, verdict for plaintiff for six thousand five hundred dollars, ($6,500,) with costs of suit.

1843, November 24th. Defendants' points filed.

1843, November 25th. Motion in arrest of judgment, and for a new trial.

1843, November 27th. Plaintiff's bill of costs filed.

1843, November 30th. Reasons in arrest of judgment, and for a new trial, filed.

1843, December 1st. Argument for a new trial commenced.

1843, December 7th. Argument of motion for new trial continued and concluded by Messrs. Mahon & Loomis, for defendants, and Mr. Biddle, contra, for plaintiff.

Same day. Affidavit of Jacob Murphy filed.

Same day. After argument defendants' points overruled, and judgment on the verdict; stay of execution for thirty days.

Same day. Plaintiff's counsel desired the sanction of the court to the following amendment to the verdict objected to by defendants' counsel. Objections filed by order of the court; after argument, objections overruled, and verdict amended as follows, viz: "And now, to wit, December 7th, 1843, inasmuch as the plaintiff, on the trial of the cause, offered proof of but a single disaster, and its injurious consequences, as set forth in the second count of the declaration, the verdict is amended accordingly, and judgment entered for the plaintiff on the said second count, and for the defendants on the first count."

1843, December 15th. Defendants enter into a bond, which is approved by Judge Irwin, in the sum of thirteen thousand dollars, and sue out their writ of error.

1843, December 15th. Citation issued.

1843, December 15th. Writ of error allowed and issued.

1843, December 16th. Citation returned; served by copy on R. Biddle, esq., attorney of defendants.

Copy of processes.

United States of America, Western dist. Penn'a, ss:

Miss Harriet Bishop, a citizen of the State of Ohio,
vs.
Lucius W. Stockton and Daniel Moore, citizens of the State of Pennsylvania.

Issue summons in case to next term, circuit court, United States, for west. dist., Penn'a.

McCANDLESS & McCLURE,
Atty's for plff.

Sept. 18, 1842.

To E. J. Roberts, esq., *clerk.*

Copy of summons.

United States, Western district of Pennsylvania, sct:

[L. S.] The President of the United States to the marshal of the western district of Pennsylvania, greeting:

We command you, that you summon Lucius W. Stockton and Daniel Moore, citizens of the State of Pennsylvania, late of your district, if they may be found therein, so that they be and appear before the judges of the circuit court of the United States in and for the western district

of Pennsylvania, in the third circuit, at a session of the same court to be holden at Pittsburgh on the third Monday of November next, to answer to Harriet Bishop, a citizen of the State of Ohio, of a plea of trespass on the case, &c.; and have you then there this writ.

Witness the honorable Roger B. Taney, esquire, chief justice of the Supreme Court of the United States, at Pittsburgh, this sixteenth day of May, A. D. 1842, and in the sixty-sixth year of the independence of the said United States.

E. J. ROBERTS, *Clerk.*

Copy of declaration.

In the circuit court of the United States for the western district of Pennsylvania.

Lucius W. Stockton, a citizen of Pennsylvania, and Daniel Moore, also a citizen of Pennsylvania, were summoned to answer Harriet Bishop, a citizen of Ohio, in an action on the case. Whereupon the said Harriet Bishop, by McCandless & McClure, her attorneys, complains, for that whereas the said defendants, before and after the time of committing the grievance hereinafter mentioned, were owners and proprietors of a certain line of stage coaches for the carriage and conveyance *of* of passengers from Baltimore, in the State of Maryland, to Wheeling, in the State of Virginia, for hire and reward, to the said defendants in that behalf; and the said defendants being such owners and proprietors of the said line of coaches so as aforesaid, thereupon heretofore, to wit, at the special instance and request of the said defendants, became, and was, a passenger in the said line of coaches, to be safely and securely carried and conveyed thereby on a certain journey, to wit, from Baltimore aforesaid to Wheeling aforesaid, for a certain fare and reward to the said defendants in that behalf; and the said defendants then and there received the said plaintiff as such passenger as aforesaid; and thereupon it then and there became, and was, the duty of the said defendants to use due and proper care that the said plaintiff should be carefully and securely carried and conveyed by, and upon, the said line of coaches on the said journey; yet the said defendants, not regarding their duty in that behalf, did not use due and proper care that the said plaintiff should be safely and securely carried and conveyed by, and upon, the said stage coach, on the said journey from Baltimore aforesaid to Wheeling aforesaid, to the damage of the plaintiff twenty thousand dollars.

And whereas also, heretofore, to wit, on the day and year aforesaid, at Baltimore aforesaid, the said plaintiff, at the said special instance and request of the said defendants, became and was a passenger by a certain other coach, to be safely and securely carried and conveyed thereby on a certain journey, to wit, from Baltimore aforesaid to Wheeling aforesaid, for certain rewards to the said defendants in that behalf; and thereupon it then and there became, and was, the duty of the said defendants to use due and proper care that the said plaintiff should be safely and securely carried and conveyed, by the said line of coaches, on the said journey from Baltimore aforesaid to Wheeling aforesaid; yet the said defendants, not regarding their duty in this behalf, did not use due and

proper care that the said plaintiff should be safely and securely carried and conveyed, by the said last mentioned coach, on the said journey from Baltimore aforesaid to Wheeling aforesaid; but wholly neglected to do so, and by reason whereof one of the legs, one of the arms, two of the ribs, [and] the collar bone of the said plaintiff, then and there became and were fractured and broken, and the said plaintiff was then and there otherwise greatly bruised, wounded, and injured; and also by means of the premises the said plaintiff became and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to wit, hitherto; during all which time the said plaintiff suffered and underwent, and endured, great pain, and was hindered and prevented from transacting and attending her necessary and lawful affairs and business by her during all that time to be performed and transacted, and lost, and was deprived of, divers great gains and advantages, and profits, which she might, and otherwise would, have derived and acquired from the same; and thereby also the said plaintiff was forced and obliged to pay, lay out, and expend, divers other large sums of money, amounting, in the whole, to the sum of one thousand dollars, in and about the endeavoring to be cured of the last mentioned bruises, fractures, and injuries received as last aforesaid, to the damage of the said plaintiff twenty thousand dollars; and therefore she brings suit.

McCANDLESS & McCLURE,
Plaintiff's att'ys.

John Doe
vs.
Richard Roe. } Pledge, &c.

Copy of rule for security for costs.

In the circuit court of the United States for the western district of Pennsylvania, in the third circuit.—No. 18, of November term, 1842.

McCandless & McClure. } Harriet Bishop, a citizen of the State of Ohio,
vs.
Darragh. } Lucius W. Stockton & Dan'l Moore, citizens of the State of Penn'a. } Summons case.

And now, to wit, February 6th, 1843, on motion of Mr. Darragh, rule for security for costs.

[L. S.] Copy, from the record.

E. J. ROBERTS, *Clerk.*

Consent of attorney.

In the circuit court of the United States for the western district of Pennsylvania.

Harriet Bishop, a citizen of the State of Ohio,
vs.
Lucius W. Stockton & Daniel Moore, citizens of the State of Pennsylvania. } No. 18, November term, 1842.

And now, to wit, April 4, 1843, Cornelius Darragh, attorney for the

defendants in the above case, agrees that a commission may issue forthwith to take the testimony of Perley B. Johnston, and of such other witnesses as shall appear to testify under said commission, although their names be not inserted in said commission, and said Cornelius Darragh does not file any cross interrogatories, and accepts service of copy of interrogatories.

C. DARRAGH, *for defts.*

Copy of interrogatories.

In the circuit court of the United States for the western district of Pennsylvania.

Harriet Bishop, a citizen of the State of Ohio,
vs.
Lucius W. Stockton & Daniel Moore, citizens of the State of Pennsylvania. } No. 18, November term, 1842.

Interrogatories to Presley B. Johnston, and others not herein named, witnesses on the part of the plaintiff, to be duly sworn and examined before Albert G. Westgate, esq., of the town of McConnellsville, Morgan county, Ohio, in conjunction with commissioners named by the defendants, if they shall think proper so to do; the testimony to be taken at the office of the said Albert Westgate, esq., in the town, county, and State aforesaid.

Interrogatory first. Were you, some time in the month of January, in the year of our Lord one thousand eight hundred and forty-two, or at any other time, a passenger in a line for the conveyance of passengers from Baltimore to Wheeling, or along any portion of said route? If so, state when, in what line, at what place, you entered; how far you proceeded; what disasters, if any, occurred; and the causes and circumstances thereof.

Interrogatory second. Do you know Harriett Bishop, the plaintiff in this case? If so, state whether she was a fellow-passenger with you on the occasion above referred to; whether she sustained any injury in said journey; when the same occurred; the nature, extent, and duration, of such injury; and how the same was occasioned.

Interrogatory third. Were you, or either of you, professionally employed as surgeon or physician to attend upon the said plaintiff? If aye, state the extent of the injury sustained, whether serious or not, and the suffering which the patient endured, before her fracture or other injury was cured.

Interrogatory fourth. Do you know any other matter which will serve to shew the justice and extent of the plaintiff's claim to damages, for injuries received on the occasion referred to? If yea, state the same as fully as if interrogated thereto.

McCANDLESS & McCLURE,
Plff's atty's.

Stipulation for costs.

In the circuit court of the United States, in and for the western district of Pennsylvania.

Harriet Bishop, vs. Stockton & Moore. } Case, No. 18, of November term, A. D. 1842.

I, John Sarber, do hereby undertake, that if the plaintiff in the above action shall not pay the costs which by law, and the practice of the court, she may become liable to pay, that I will pay the same.

JOHN SARBER.

Taken, acknowledged, and subscribed, this 10th day of April, A. D. 1843, before me,

E. J. ROBERTS, *Clerk.*

Copy of commission and depositions.

In the circuit court of the United States for the western district of Pennsylvania, in the third circuit.—No. 18, of November term, 1842.

McCandless & McClure. } Harriet Bishop, a citizen of the State of Ohio, vs. Darragh. { Lucius W. Stockton & Daniel Moore, citizens of Pennsylvania } Case.

The President of the United States to Albert G. Westgate, esquire, of the town of McConnellsville, Morgan county, Ohio.

Know you, that in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you, full power and authority, in pursuance of a rule lately made in the circuit court of the United States, in and for the western district of Pennsylvania, in a certain action on the case therein depending, wherein the said Harriet Bishop is plaintiff, and the said Lucius W. Stockton and Daniel Moore are defendants, to call before you, at a certain day and place by you for that purpose appointed, all and every person or persons who may be named to you by the said plaintiff as witnesses in the said action, and then and there to examine them, on their respective oaths and affirmations, on certain interrogatories hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall have so done, you are to send the same to the said court, closed up, and under your seals, plainly and distinctly set, together with this writ.

Witness the honorable Roger B. Taney, esquire, chief justice of the Supreme Court of the United States, at Pittsburgh, this fifth day of April, A. D. 1843, and of the independence of the said United States the sixty-seventh.

E. J. ROBERTS, *Clerk.*

In the circuit court of the United States for the western district of Pennsylvania.

Harriet Bishop, a citizen of the State of Ohio, vs. Lucius W. Stockton & Daniel Moore, citizens of Pennsylvania. } No. 18, of November term, 1842.

Interrogatories to Presley B. Johnston, and others not herein named, witnesses on the part of the plaintiff, to be duly sworn and examined before Albert G. Westgate, esq., of the town of McConnellsville, Morgan county, Ohio, in conjunction with commissioners named by the defendants, if they shall think proper so to do; the testimony to be taken at the office of the said Albert Westgate, esq'r, in the town, county, and State aforesaid.

Interrogatory first. Were you, some time in the month of January, in the year of our Lord one thousand eight hundred and forty-two, or at any other time, a passenger in a line for the conveyance of passengers from Baltimore to Wheeling, or along any portion of said route? If so, state when, in what line, at what place, you entered; how far you proceeded; what disasters, if any, occurred; and the causes and circumstances thereof.

Interrogatory second. Do you know Harriet Bishop, the plaintiff in this case? If so, state whether she was a fellow-passenger with you on the occasion above referred to; whether she sustained any injury in said journey; when the same occurred; the nature, extent, and duration, of such injury; and how the same was occasioned.

Interrogatory third. Were you, or either of you, professionally employed as surgeon or physician to attend upon the said plaintiff? If aye, state the extent of the injury sustained, whether serious or not, and the suffering which the patient endured, before her fracture or other injury was cured.

Interrogatory fourth. Do you know any other matter which will serve to shew the justice and extent of the plaintiff's claim to damages, for injuries received on the occasion referred to? If yea, state the same as fully as if interrogated thereto.

McCANDLESS & McCLURE,
Plff's att'ys.

A true copy.

E. J. ROBERTS, *Clerk.*

In the circuit court of the United States for the western district of Pennsylvania.

Harriet Bishop, a citizen of the State of Ohio, vs. Lucius W. Stockton & Daniel Moore, citizens of Pennsylvania. } No. 18, November term, 1842.

And now, to wit, April 4th, 1843, Cornelius Darragh, attorney for the defendants in the above case, agrees that a commission may issue forth-

with to take the testimony of Presley B. Johnston, and of such other witnesses as shall appear to testify under said commission, although their names be not inserted in said commission, and said Cornelius Darragh does not file any cross interrogatories, and accepts service of copy of interrogatories.

C. DARRAGH, *for def'ts.*

A true copy.

E. J. ROBERTS, *Clerk.*

Depositions of witnesses produced, sworn, and examined, on the fourteenth day of April, in the year of our Lord one thousand eight hundred and forty-three, at the office of A. G. Westgate, in the town of McConnellsville, Morgan county, Ohio, by virtue of a commission issuing from the circuit court of the United States for the western district of Pennsylvania, in the third circuit, to me, Albert G. Westgate, directed, for the examination of witnesses in a certain cause pending in said court, wherein Harriet Bishop, a citizen of the State of Ohio, is plaintiff, and Lucius W. Stockton and Daniel Moore, citizens of Pennsylvania, are defendants.

Pearley B. Johnston, (by profession a physician and surgeon,) of the town of McConnellsville, in the county of Morgan, Ohio, aged forty-four years, being produced, and sworn, and examined, on behalf of plaintiff, deposeth as follows:

1st. To the first interrogatory on part of the plaintiff he answers as follows: "No."

2d. To the second interrogatory on part of plaintiff he answers as follows: "I know Harriet Bishop, the plaintiff in this case, but was not a passenger with her at the time specified."

3d. To the third interrogatory on part of plaintiff he answers as follows: "Yes, in January, 1842, the exact day I do not recollect, and have no means of ascertaining, I was called as a surgeon to visit Miss Harriet Bishop, the plaintiff in this case, who I learned had just arrived in town from the east, and had been injured by the upsetting of a stage coach. I found, upon examination, that her left arm had been injured, and had been dressed before I saw her. Upon removing the dressing of bandages and splints, which had become much deranged, I found an oblique fracture of the bone of the left arm, named the 'humeras,' near the middle of that bone; the arm was shortened, as I suppose, about one inch, and at the fracture was much altered in shape. The whole arm and fore arm, from the shoulder to the hand, were swollen and inflamed, and a number of square inches about the place of fracture and elbow joint, was quite purple from extravasation of blood; near the inner condyle of the humeras the swelling was particularly prominent, which gave it the appearance of a fracture at that place. The joint was stiffened, and much pain was apparently occasioned by flexing or extending it. Her face and upper lip were much swollen, with a dark circle around one eye; the skin was abraded in a number of places about the face, and there was an angular cut in the scalp about an inch long. Her whole appearance was that of a person who had been badly injured; she necessarily must

have suffered much pain at the time of injury, and subsequent treatment. I prescribed for her, and dressed her arm in the usual manner, and continued to attend to her case for about eight weeks; at the end of which time the broken ends of the bone had united, but considerable swelling and stiffness of the elbow joint still remained. Although a fracture of this kind is usually not difficult to manage, yet in this case I had more difficulty in keeping the ends of the bone in their proper situation, and the arm of a proper shape and length, owing to the firm contraction of the muscles, than in any previous case of this kind I had ever attended. I examined the arm yesterday, and found that the broken ends of bone had firmly united, that the arm was a little shortened, and that there was a slight deformity at the place of fracture. The elbow joint appeared perfect. My opinion is, that, for three months after the fracture and injury to joint, she had but little use of the injured arm, and that the motion and strength of the arm had not, for the last year, been as good as the other, but that eventually it will cause her but little inconvenience."

4th. To the fourth interrogatory on behalf of plaintiff he answers: "No."

P. B. JOHNSON.

Attest: A. G. Westgate.

Ann E. Dearing, wife of Russel H. Dearing, of the town of McConnelsville, Morgan county, Ohio, aged twenty-eight years, or thereabout, being produced, sworn, and examined, on behalf of the plaintiff, deposeth as follows:

1st. To the first interrogatory on behalf of the plaintiff she answers as follows: "I was not."

2d. To the second interrogatory on behalf of the plaintiff she answers as follows: "I know Harriet Bishop, the plaintiff in this case, but was not in the stage at the time specified."

3d. To the third interrogatory on behalf of the plaintiff she answers as follows: "I was not."

4th. To the fourth interrogatory on behalf of the plaintiff she answers as follows: "Harriet Bishop, the plaintiff in this case, arrived at my house in McConnellsville, Morgan county, Ohio, in company with her brother Henry Bishop, on the morning of the twelfth of January, A. D. 1842. I should not have known her from her appearance; her face was very much bruised, swollen, and disfigured; her upper lip was severely cut on the inside, which has caused a permanent enlargement of the lip; the right eye was nearly swollen shut, and was very much bruised; her forehead, nose, and neck, were very much skinned and bruised; she had a cut upon the left side of her head; I have just examined the scar, and it is about two inches in length. Her left arm was broken above the elbow, and very much injured in the elbow joint; from near her wrist to her shoulder it was very much swollen, and literally black and green. I have seen a number of fractures, but this one was decidedly the worst one that I have ever seen. Her arm was very crooked, and every time it was dressed by Doctor P. B. Johnston, at intervals of about two or three days, he made exertions to straighten it; at which times she appeared to suffer great pain. During the greater part of the eight weeks

that the doctor attended her she suffered more or less pain, at times apparently very acute. For about five or six months after her arrival, she was unable to do any thing at all with her left arm; she is still unable to dress herself without assistance. She has complained of suffering more or less pain ever since the accident occurred, particularly in the elbow joint. Her left arm appears to be shorter than her other. A piece was broken off from one of her upper front teeth. The injury received on her lip has caused a permanent disfiguration."

ANN E. DEARING.

Attest: A. G. Westgate.

Hester Robertson, an unmarried woman of the town of McConnelsville, Morgan county, Ohio, aged twenty-three years, being produced, sworn, and examined, on behalf of the plaintiff, deposeth as follows:

1st. To the first interrogatory on behalf of plaintiff she answers as follows: "No."

2d. To the second interrogatory on behalf of plaintiff she answers as follows: I know Harriet Bishop, but was not with her in the stage at the time specified.

3d. To the third interrogatory on behalf of plaintiff she answers as follows: "I was not."

4th. To the fourth interrogatory on behalf of plaintiff she answers as follows: "I was residing with Mr. Russel H. Dearing, in McConnelsville, Morgan county, Ohio, at the time that Miss Harriet Bishop, the plaintiff in this case, arrived; which was, I believe, on the 12th day of January, A. D. 1842. Her face was very much bruised and disfigured; her upper lip was very badly cut, much swollen, and bruised; the cuts and bruises upon the mouth has caused a permanent disfiguration of the mouth; her nose and neck was badly skinned and bruised; her right eye was nearly swollen shut, and was very black around it; there was a cut upon the left side of her head, about two inches in length; her left arm was broke above the elbow, and very much injured in the elbow joint; from her wrist, or near it, to her shoulder, it was very much swollen and bruised, and of a black and greenish color, and loathsome to look at; her arm was very crooked, and every time the doctor dressed it, at intervals of about two or three days, he made exertions to straighten it; at which time she evidently suffered great pain. About eight or ten days after her arrival I assisted the doctor to dress her arm, which was done with great difficulty on account of her apparent suffering. During the eight weeks the doctor attended her, she apparently suffered much pain. She was unable to *to* any thing for a long time after her arrival. She has complained of suffering pain in her arm, more or less, ever since the accident occurred. HESTER ANN ROBERTSON.

Attest: A. G. Westgate.

Commissioner's fees,	$1 50
Witness' fees,	1 50
Postage,	1 50
	$4 50 paid by plaintiff.

I, Albert G. Westgate, do hereby certify, that the above named Perley B. Johnston, Ann E. Dearing, and Hester Robertson, were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the interrogatories annexed to the commission hereto attached, without favor or affection to either party, and that the foregoing depositions were by them respectively subscribed and reduced to writing by me, and taken on the fourteenth day of April, A. D. 1843, at the town of McConnellsville, Morgan county, Ohio, and at my office therein.

In testimony whereof, I hereunto set my hand, this 14th day of April, in the year 1843.

A. G. WESTGATE,
Commiss'r and acting justice of the peace in and for Morgan county, Ohio.

Copy of plea.

Bishop, vs. Stockton et al. } Ct. ct. U. S. west. Penn'a.

The defendants, by Cornelius Darragh, their attorney, comes and defends the wrong, when, &c., and for plea say, that they are not guilty of the matters and things alleged against them in the plaintiff's declaration, and of this they put themself upon the country.

May 10, 1843 C. DARRAGH, *for defts.*

Copy of defendant's points.

Harriet Bishop, vs. Stockton & Moore. }

The counsel of the defendants respectfully request the court to instruct the jury as follows:

1st. That the proprietors of a stage coach do not warrant the safety of their passengers, in the character of common carriers; and that they are not responsible for mere accidents to the persons of passengers, but only for the want of due care. (Given.)

2d. That they do not warrant the safety of passengers: their undertaking, as to them, goes no further than this: that as far as human wisdom and vigilance can go, they will provide for the safe conveyance of their passengers. (Given.)

3d. That if the jury believe that the accident in this case was caused by the intoxication of James Corbin the driver, but that he was not only not in the habit of drinking intoxicating liquors, but was intoxicated, on this occasion, for the first time in his life; that, in this event, the defendants will have exercised due care in the selection and employment of James Corbin as a driver, and will not be liable in this action. (Refused.)

4th. That if the jury believe that the accident was caused by the intoxication of James Corbin, yet if they also believe that a long course of previous habitual good conduct through a series of years, from his boy-

hood to the time of this accident in question, had satisfied the defendants, the tavern keepers with whom James Corbin boarded, and his associates, that he was a temperate and an abstemious man, that then the defendants, as far as ordinary wisdom and vigilant could go, did provide for the safety of their passengers in the selection and employment of James Corbin as a driver, and that they are not liable in this action. (Refused.)

5th. If the jury believe that, at the time of the accident, the coach was on the upper and safer portion of the road, and that the accident occurred in the effort of Corbin to take up his horses after descending the hill, that the defendants are not liable in this action. (Refused.)

6th. That although the jury may believe that Corbin was, at the time of the accident, partially intoxicated, still, if he was not so much intoxicated as to be incapable of the management and control of this team, and the accident did not arise from that cause, but from the state of the weather, obscurity of the night, and the condition of the roads, that the defendants are not liable in this action; especially if the jury believe that the said Corbin had heretofore sustained an unexceptionable character for skill, care, and sobriety. (Refused.)

7th. If the jury believe that the driver was a person of competent skill, of good habits, and in every respect qualified and suitably prepared for the business in which he was engaged, plaintiff cannot recover, unless they were clearly satisfied that, on this occasion, the disaster was attributable to the fault of the driver, and not to the darkness of the night, or other accidental cause, and that said accident would not have occurred but for the fault of the driver. (Given.)

Defendants' exceptions.

Harriet Bishop, vs. Stockton & Moore. } In the C. court of the United States.

The counsel for defendants respectfully except to the refusal of the court to instruct the jury as prayed for on all the points presented by them, except the first, second, and seventh.

MAHON & WASHINGTON,
METCALF & LOOMIS,
Atty's for defendants.

25th Nov'r, 1843.

Copy of reasons for a new trial, and in arrest of judgment.

Harriet Bishop, vs. Stockton & Moore.

The counsel for defendants move the court for a new trial, for the following reasons, viz:

1. The verdict is against the weight of evidence.
2. It is rendered for vindictive damages.

3d. It is not the result of the deliberate opinions of the jurors, or of comparison of their several opinions, but the amount was fixed and determined by the average of different sums named by the jurors.

I, Albert G. Westgate, do hereby certify, that the above named Perley B. Johnston, Ann E. Dearing, and Hester Robertson, were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the interrogatories annexed to the commission hereto attached, without favor or affection to either party, and that the foregoing depositions were by them respectively subscribed and reduced to writing by me, and taken on the fourteenth day of April, A. D. 1843, at the town of McConnellsville, Morgan county, Ohio, and at my office therein.

In testimony whereof, I hereunto set my hand, this 14th day of April, in the year 1843.

A. G. WESTGATE,
Commiss'r and acting justice of the peace in and for Morgan county, Ohio.

Copy of plea.

Bishop, vs. Stockton et al. } Ct. ct. U. S. west. Penn'a.

The defendants, by Cornelius Darragh, their attorney, comes and defends the wrong, when, &c., and for plea say, that they are not guilty of the matters and things alleged against them in the plaintiff's declaration, and of this they put themself upon the country.

May 10, 1843 C. DARRAGH, *for defts.*

Copy of defendant's points.

Harriet Bishop, vs. Stockton & Moore. }

The counsel of the defendants respectfully request the court to instruct the jury as follows:

1st. That the proprietors of a stage coach do not warrant the safety of their passengers, in the character of common carriers; and that they are not responsible for mere accidents to the persons of passengers, but only for the want of due care. (Given.)

2d. That they do not warrant the safety of passengers; their undertaking, as to them, goes no further than this: that as far as human wisdom and vigilance can go, they will provide for the safe conveyance of their passengers. (Given.)

3d. That if the jury believe that the accident in this case was caused by the intoxication of James Corbin the driver, but that he was not only not in the habit of drinking intoxicating liquors, but was intoxicated, on this occasion, for the first time in his life; that, in this event, the defendants will have exercised due care in the selection and employment of James Corbin as a driver, and will not be liable in this action. (Refused.)

4th. That if the jury believe that the accident was caused by the intoxication of James Corbin, yet if they also believe that a long course of previous habitual good conduct through a series of years, from his boy-

hood to the time of this accident in question, had satisfied the defendants, the tavern keepers with whom James Corbin boarded, and his associates, that he was a temperate and an abstemious man, that then the defendants, as far as ordinary wisdom and vigilant could go, did provide for the safety of their passengers in the selection and employment of James Corbin as a driver, and that they are not liable in this action. (Refused.)

5th. If the jury believe that, at the time of the accident, the coach was on the upper and safer portion of the road, and that the accident occurred in the effort of Corbin to take up his horses after descending the hill, that the defendants are not liable in this action. (Refused.)

6th. That although the jury may believe that Corbin was, at the time of the accident, partially intoxicated, still, if he was not so much intoxicated as to be incapable of the management and control of this team, and the accident did not arise from that cause, but from the state of the weather, obscurity of the night, and the condition of the roads, that the defendants are not liable in this action; especially if the jury believe that the said Corbin had heretofore sustained an unexceptionable character for skill, care, and sobriety. (Refused.)

7th. If the jury believe that the driver was a person of competent skill, of good habits, and in every respect qualified and suitably prepared for the business in which he was engaged, plaintiff cannot recover, unless they were clearly satisfied that, on this occasion, the disaster was attributable to the fault of the driver, and not to the darkness of the night, or other accidental cause, and that said accident would not have occurred but for the fault of the driver. (Given.)

Defendants' exceptions.

Harriet Bishop, vs. Stockton & Moore. } In the C. court of the United States.

The counsel for defendants respectfully except to the refusal of the court to instruct the jury as prayed for on all the points presented by them, except the first, second, and seventh.

MAHON & WASHINGTON,
METCALF & LOOMIS,
Atty's for defendants.

25th Nov'r, 1843.

Copy of reasons for a new trial, and in arrest of judgment.

Harriet Bishop, vs. Stockton & Moore.

The counsel for defendants move the court for a new trial, for the following reasons, viz:

1. The verdict is against the weight of evidence.
2. It is rendered for vindictive damages.
3d. It is not the result of the deliberate opinions of the jurors, or of comparison of their several opinions, but the amount was fixed and determined by the average of different sums named by the jurors.

They move in arrest of judgment, because—

1. Because no sufficient cause of action is set forth in plaintiff's first count of narr., and the verdict is general in both counts.

2d. No sufficient cause of action is set forth in either count; there being no allegation that the amount charged for fare, or passage money, had in fact been paid by plaintiff.

3d. General errors.

MAHON & WASHINGTON,
Atty's for defendants.

November 27th, 1843.

Copy of affidavit of Jacob Murphy.

Personally appeared before me, a justice of the peace in and for the county of Fayette, Jacob Murphy, who being sworn, doth depose and say, that he was a juror in the circuit court of the United [States] for the western district of Pennsylvania, for November term, 1843, and that he was one of the pannel who tried the case of Harriet Bishop vs. L. W. Stockton and Daniel Moore, for damages accruing from the upsetting of a stage coach, and that the method adopted by the jury by which they settled on the amount of the verdict was this: it was agreed that each juror should mark the sum he found, and that the total amount, divided by twelve, should, without alteration, be the amount of the verdict; in accordance with their agreement, each juryman put down the amount he thought proper; they then added the whole together, and divided the amount by twelve, and the product was six thousand five hundred dollars, which was reported as the verdict of the jury.

JACOB MURPHY.

Sworn and subscribed before me, the 5 December, 1843.

CLEMENT WOOD, *J. P.*

The verdict as ordered to [*be*] *entered by the court.*

And now, to wit, December 7th, 1843, inasmuch as the plaintiff, on the trial of the cause, offered proof of but a single disaster, and its injurious consequences, as set forth in the second count of the declaration, the verdict is amended accordingly, and judgment entered for the plaintiff on the said second count, and for the defendants on the first count.

Copy of defendants' objections.

In the circuit court of the United States, western district of Pennsylvania.

Harriet Bishop,
vs.
L. W. Stockton et al.

The counsel for the plaintiff having moved the court to make the following entry of record in the cause, to wit: "And now, to wit, November, 1843, inasmuch as the plaintiff, on the trial of the cause, offered proof of but a single disaster, and its injurious consequences, as set forth in the second count of the declaration, the verdict is amended accord-

ingly, and judgment entered for the plaintiff on said second count, and for the defendant on the first count."

The defendants, by their counsel, now, to wit, November 7th, 1843, appear in court, and object to the allowance of said motion by the court, and to any permission by the court that such entry as is above indicated should be made in the cause, and in support of their objection assign the following causes, to wit: that the issue, if any, joined by the pleadings between the parties, was upon the whole declaration; that the jury were sworn to try the issue, if any, joined upon the whole declaration, that the jury returned their verdict in writing in the following words:

Harriet Bishop,
vs.
Stockton, Moore & Co.

We, the jurors, sworn and impannelled in this cause, do find for the plaintiff six thousand five hundred dollars, with costs of suit, this 25 day day of November, A. D. 1843.

Which said verdict was received by the court; and thereupon an entry was made of record in the cause, in the following words, to wit:

"Harriet Bishop,
vs.
Stockton & Moore.

Jury find for the plaintiff six thousand five hundred dollars, with costs of suit."

That the verdict so found by the jury, was found by them upon the entire issue or issues, if any, between the parties, and upon the whole declaration, embracing both the first and second counts thereof; that said verdict is general; that the testimony given in the cause was as applicable to the first as to the second count of the declaration; that the defendants have as good a right to claim that the verdict of the jury should be amended, by entering it upon the first count of the declaration for the plaintiff, and judgment thereon for the plaintiff, and judgment on the second count for the defendants, as the plaintiff has to claim that the proposed entry should be made. That the jury having given a general verdict for entire damages on both counts of the declaration, which verdict was received by the court, and entered of record without objection from the plaintiff, and the jury having separated, the court have not the legal right, and if they possess the legal right, ought not, in the exercise of a sound discretion, to modify the verdict of the jury in the manner proposed by the plaintiff's counsel; which objections, and reasons in support thereof, are respectfully submitted by the defendants, to be filed and entered of record in the cause.

METCALF & LOOMIS,
MAHON & WASHINGTON,
Atty's for defendants.

United States, western district of Pennsylvania, ss:

I, Edward J. Roberts, clerk of the circuit court of the United States in and for the western district of Pennsylvania, do hereby certify, that

the foregoing is a full, true, and complete, exemplification of the record in the case of Harriet Bishop, a citizen of the State of Ohio, against Lucius W. Stockton and Daniel Moore, citizens of Pennsylvania.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at Pittsburg, this twentieth day of December, A. D. 1843, and in the sixty-eighth year of the independence of the said United States.

[L. S.]

E. J. ROBERTS, *Clerk.*

Copy of Citation.

[SEAL.] The President of the United States to the marshal of the western district of Pennsylvania, greeting:

Whereas, Lucius W. Stockton and Daniel Moore have this day sued out their writ of error to a certain judgment, in an action on the case recovered against them, on the 25th day of November, A. D. 1843, in the circuit court of the United States, for the western district of Pennsylvania aforesaid, in the third circuit, by Harriet Bishop, a citizen of the State of Ohio, plaintiff, against Lucius W. Stockton and Daniel Moore, citizens of Pennsylvania, defendants, returnable in the Supreme Court of the United States, on the second Monday of January next; these are, therefore, to command you, that you make known to the said Harriet Bishop that she be and appear to the said writ of error, in the said Supreme Court, on the first day of the next term thereof, to hear an assignment of errors thereof, and hereof fail not at your peril. And how you shall have executed this writ of citation, make return to our said court, at an adjourned court to be held on the first Monday of January next.

Witness the honorable Roger B. Taney, esquire, chief justice of the Supreme Court of the United States, at Pittsburgh, this fifteenth day of December, A. D. 1843, and of the United States the sixty-eighth.

TH. IRWIN. [SEAL.]

Writ of Error.

United States, western district of Pennsylvania, ss:

[SEAL.] The President of the United States to the judges of the circuit court of the United States, for the western district of Pennsylvania, in the third circuit:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, between Harriet Bishop, a citizen of the State of Ohio, plaintiff, and Lucius W. Stockton and Daniel Moore, citizens of the State of Pennsylvania, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things

concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right, and according to [the] law and customs of the United States, should be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the Supreme Court of the United States, at Pittsburgh, this fifteenth day of December, A. D. 1843, and in the sixty-eight year of the independence of the said United States.

E. J. ROBERTS, *Clerk.*

I, Thomas Irwin, one of the judges of the circuit court of the United States, for the western district of Pennsylvania, having taken and approved the bond of L. W. Stockton and Daniel Moore, the plaintiffs in error, with Hugh Campbell, their security, do allow this writ of error.

Witness my hand and seal, this 15th day of December, A. D. 1843.

TH. IRWIN, [SEAL.]

In the district court of the United States for the western district of Pennsylvania, in the third *strict.*

Lucius W. Stockton and Daniel Moore, citizens of the State of Pennsylvania, pl'ff in error.

vs.

Harriet Bishop, a citizen of the State of Ohio, def't in error.

} Case.—Appeal to the Supreme Court of United States.

Know all men by these presents, that we, Lucius W. Stockton, of the county of Fayette, and State of Penn'a, and Daniel Moore, of the county of Washington, State of Penn'a, and Doctor Hugh Campbell, of Fayette county, and State aforesaid, are held and firmly bound unto Harriet Bishop, defend't in error, in the above suit, in the sum of thirteen thousand dollars, lawful money of the United States, to be paid to the said Harriet Bishop, her certain attorney, executors, administrators, or assigns, to which payments, well and [truly] to be made, we bind ourselves, and each of us, our heirs, executors, and administrators, and every of them, firmly and severally, by these presents. Sealed with our seals, and dated the fifteenth day of December, A. D. eighteen hundred and forty-three.

Now, the condition of this obligation is such, that whereas the above named Lucius W. Stockton and Daniel Moore have sued out their writ of error to the Supreme Court of the United States, from a certain judgment in the circuit court of the United States of the western district of Pennsylvania, for the sum of six thousand five hundred dollars, with costs of suit, in a certain action on the case, wherein the said Harriet Bishop is plaintiff, and the said Lucius W. Stockton and Daniel Moore are def'ts. Now, therefore, if the said L. W. Stockton and Daniel